

## **DETAILED ACTION**

Examiner acknowledges the reply filed July 28, 2009.

### ***Response to Arguments***

Applicant's arguments have been considered but are not found persuasive. Applicant contends that Ito et al. (hereinafter "Ito") fail to disclose averaging on a per predetermined time segment basis, values of the vital data of a same kind obtained from *each of the plurality of subjects* in a predetermined area, and that makes value - added information indicating changes over time of the averaged values of the vital data of the same kind. The Examiner respectfully disagrees.

Under the broadest reasonable interpretation of the claim language in light of the specification, the server averages data for *each* of a plurality of subjects. That is, an average is generated for *each* subject, and the server performs this function for multiple subjects. Turning to the Ito reference, the health care center collects data for a plurality of patients, and provides services of processing the data to return statistical figures such as graphs, historical data, average values, and trends (Paragraphs 0128, 0139). Graphs and visualizations comprise value – added information indicating changes over time, since Ito discloses the graphs as showing past measurement values. Furthermore, trends in the change of measurement values comprise changes over time (Paragraph 0139). Therefore, the applied prior art discloses "averag[ing] . . . values of the vital data . . . obtained from each of the plurality of subjects . . . and that makes value - added information indicating changes over time . . ." If Applicant intended to claim a

single average calculated by the data of multiple subjects , the claim language should be amended to reflect such a concept.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 30 – 51, 55 and 56 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In particular, the specification lacks support for processors that are structural components of each of a "value - added information making unit" and a "database making unit." The Applicant is invited to clarify the record and point out support for the amendments submitted July 28, 2009 to provide supporting disclosure for the claimed processors.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 30 – 51, 55 and 56 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the terms "output unit," "providing unit," "database making unit" and "value – added information making unit" render the claims

indefinite, since it is unclear whether the “units” comprise hardware and software, or are merely software. The specification does not provide clarification, and without more it is nearly impossible for the Examiner to formulate a comprehensive search for the necessary limiting *structure* claimed by reciting the aforementioned "units." In response to the amendments submitted July 28, 2009, the Examiner was unable to find support within the specification stating that the units comprised processors. The units appear to be software, executed by the computers or servers on which they are stored. Furthermore, the Applicant should use language within the claims that mirrors the specification to avoid new matter issues (i.e. the term “processor” is not used in the specification.”

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claim 30 – 51, 55, and 56 are rejected under 35 U.S.C. 102(b) as being anticipated by Ito et al. U.S. PGPub No. 2001/0031913.**

Regarding claim 30, Ito et al. disclose a vital data utilization system comprising:  
a server (Paragraph 0040 health care center on the Internet);  
a receiving apparatus (Figure 6 shows communication links between the at home device, Internet, and health care center); and

a plurality of measurement instruments (Paragraphs 0035 – 0038, 0041 biosensor devices distributed in homes),

wherein said server, said receiving apparatus, and said measurement instruments are connected to each other via a communication network (Figure 6 shows devices connected to the health care center via the Internet),

wherein each of said measurement instruments includes:

a vital data measurement unit that measures vital data of a subject of a plurality of subjects in a quantitative manner (Paragraph 0100 – 0102 biosensor );

a clock unit that detects a measurement time at which the vital data of the subject is measured by said vital data measurement unit (Paragraph 0118 signal processor records time); and

a sending unit that sends, to said server, a set of information including the measured vital data of the subject and the measurement time (Paragraphs 0122 – 0128, 0130 – 0133 two way communication with health care center),

wherein said server includes:

a receiving unit that receives, from each of said measurement instruments, a set of information including the measured vital data of the subject and the measurement time (Paragraphs 0122 – 0128 health care center is connected to the Internet and receives data from patient devices);

a storage unit (Paragraph 0128 database);

a database making unit that stores each received set of information in said storage unit and that makes, using a processor thereof, a database associating each received set of information with a respective subject and measurement time (Paragraphs 0118, 0128, 0133, 0171 discloses databases at the health care center that store patient collected data);

a value-added information making unit that averages using a processor thereof, on a per predetermined time segment basis, values of the vital data of a same kind obtained from each of the plurality of subjects in a predetermined area, and makes value-added information indicating changes over time of the averaged values of the vital data of the same kind, the values of the vital data being measured using said measurement instruments and being stored in the database (Paragraphs 0120, 0139, 0171 disclose the health care center generating and transmitting to each user graphs and visualizations, average measurement values, and trends in the change of measured values on a measurement – time basis. As discussed throughout the Ito et al. reference, the health care center provides this service for a plurality of patients, and also identifies and groups patients who wish to interact with other patients having similar measurements in paragraph 0160); and

a value-added information providing unit that provides said receiving apparatus with the made value-added information (Paragraphs 0139 – 0153 disclose creating visualizations and statistical analyses of data, which is transmitted via bidirectional communication to patients as shown in figure 6), and wherein said receiving apparatus includes an output unit that receives the value- added information provided by said value-added information providing unit and that outputs the value-

added information (Paragraphs 0171 – 0178 information and services are output to the patient based on collected patient data and subsequent processing of the data).

Independent claims 44, 46, 48, 55, and 56 are rejected on substantially the same basis under Ito et al., shown above. Dependent claims 31 – 43, 45, 47, and 49 – 51 are rejected by Ito et al. paragraphs 0002, 0118, 0128, 0160 – 0163, 0170 – 0178, 0192 – 0196,

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kai Rajan whose telephone number is (571)272-3077. The examiner can normally be reached on Monday - Friday 9:00AM to 4:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Johnson can be reached on 571-272-4768. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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3769

January 7, 2010